IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2538 of 1993

HONOURABLE MR.JUSTICE KS JHAVERI

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AMRUTLAL H PANDYA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR YS MANKAD for Petitioner(s) : 1,
MR VM PANCHOLI, AGP, for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/10/2005

ORAL JUDGMENT

1. The petitioner herein has challenged the order dated 21.11.1992 whereby the respondent authority directed the petitioner to pay up additional stamp duty.

2. The petitioner had purchased immovable property at Anjar by way of registered sale deed and presented the same before the Sub Registrar on 4.11.1985. The petitioner has also paid requisite stamp duty.

3. The respondent authority issued notice dated 7.1.1989 asking the petitioner to pay deficit stamp duty with fine. Thereafter the respondent authority passed final order under section 32-A of the Act as stated hereinabove.

4. Learned counsel for the petitioner submitted that according tot he provisions of the Act no instrument beyond the period of two years can be taken into suo motu proceedings by the Collector for examining the same for the purpose of satisfying himself as to the correctness of the consideration or the market value of the property. According to him there is a gross delay in initiating the proceedings. He, therefore, submitted that the impugned order is required to be quashed and set aside.

5. Mr. V.M. Pancholi, learned AGP, submitted that the order passed by the respondent authority is just and proper as the said authority as power to take suo motu proceedings. He submitted that merely on the ground of delay the impugned order may not be quashed.

6. As a result of the hearing it is clear that in the present case the proceedings were initiated after a period of about three years and therefore the proceedings are clearly barred by limitation. In the case of Shailesh J. Varia Vs. Sub-Registrar, Narmada Bhavan, reported in 1996(2) GLH 848 it is

held that the exercise of determination of market value should be exercised within reasonable time.

7. In Special Civil Application Nos.654/2000 and 2794/2001, this Court has passed an order dated 5.12.2001 wherein it is held as under:

> "11. Learned advocate submitted that in light of the fact that the time limit which was earlier two years was raised to six years is indicative of the fact that the Legislature wanted the authorities to act within period prescribed. If the Legislature wanted the authorities to act beyond that limit there was no reason for the Legislature to increase that limit from two years to six years. The fact that the time limit is increased by the Legislature, it is to be inferred that it wanted the authorities to act within that time limit. Therefore, the Court may hold the action of the respondent authorities as devoid of any power and the same be quashed and set aside on that ground alone."

8. In the order dated 14.12.2004 passed in Special Civil Court No.17042/2003 this Court observed as under:

> "The transaction in question took place on 01.02.1995 and the notice under Rule 4 of the Rules came to be issued for the first time on 16.6.2003. No affidavit in reply is filed on behalf of the respondents justifying the delay in initiating the proceedings under Section 32-A of the Act. Even in the notice under Rule 4 of the Rules and in the impugned order there is nothing which can justify the delay in initiation of the proceedings under section 32-A of the Act. Even in the notice which is issued under Rule 4 of the Rules, no particulars are given and no basis is shown by respondent no.3 fixing the provisional market value and even in the impugned order dated 18.9.2003, nothing has been mentioned as to on what basis respondent no.3 has fixed the

> market value of the property in question at Rs.2,90,766/-. Thus, the impugned order is illegal and arbitrary as the same is without any basis. Under the circumstances and in view of the fact that no reasons have been assigned determining the market value of the property in question at Rs.2,90,766/-, the impugned order dated 18.09.2003 is required to be quashed and set aside and the matter is remanded to respondent no.3 for deciding afresh on its own merits and in accordance with law and after giving opportunity to the petitioner. It will be open for the petitioner to raise all the contentions which are available to him inclusive of the question of limitation and shall point out the judgements of this court upon which reliance is placed by him. It is hoped that respondent no.3 will consider the said judgements also."

9. In view of the above, I am of the opinion that the proceedings have been initiated beyond the prescribed period of time and even no reasons have been assigned for determining the market value of the property. The petition is, therefore, allowed. The impugned order at Annexure-A is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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